

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77- 1818

LAWRENCE DAVID RAMAPURAM,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Petitioner, Lawrence David Ramapuram ("Ramapuram"), prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered on May 24, 1978, in a cause there entitled United States of America, Appellee, vs. Lawrence David Ramapuram, Appellant, No. 77-1911 in that court, affirming orders of the United

States District Court for the District of Maryland at Baltimore, made on May 27, 1977, holding that the government had sufficiently complied with the certification requirement of Section 5032 of the Juvenile Justice and Delinquency Prevention Act of 1974 (18 U.S.C. Sections 5031-5042), and denying Ramapuram's motion to dismiss juvenile delinquency proceedings begun against him on January 14, 1976 (on the ground that the District Court lacked jurisdiction over him because the government had proceeded against him in the action even though the United States Attorney had failed until May 17, 1977 to certify, as required by 18 U.S.C., Section 5032, that the appropriate state juvenile court refused to assume jurisdiction over his case), and granting the government's motion to transfer Ramapuram's case for adult criminal prosecution.

OPINIONS BELOW

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit (*infra*, Appendix A) is not reported. The memorandum and order of the United States District Court for the District of Maryland (*infra*, Appendix B) is reported at 432 F.Supp. 140.

JURISDICTION

The judgment of the Court of Appeals was entered on May 24, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Rule 22(2) of the Re-

vised Rules of this Court.

QUESTIONS PRESENTED FOR REVIEW

In this juvenile delinquency proceeding, in which the initial Section 5032 certification, filed by the United States Attorney on January 14, 1976, certified only that the interested State's Attorney (for Baltimore County, Maryland), rather than the appropriate State court (the Circuit Court for Baltimore County sitting as a juvenile court), as specified in Section 5032, had refused to assume jurisdiction over Ramapuram, and in which the government proceeded against Ramapuram under that initial certificate in various ways from January 14, 1976 until May 17, 1977, when the United States Attorney, in response to Ramapuram's motion to dismiss for lack of a proper Section 5032 certification, finally filed a second certification, certifying that the State juvenile court refused to assume jurisdiction:

1. Did the District Court have jurisdiction to proceed against Ramapuram prior to the filing of the second Section 5032 certification?

2. Did the filing of that second certification, after hearings in the District Court on the government's motion to transfer the case for adult criminal prosecution and on Ramapuram's motion to dismiss the juvenile delinquency proceeding for lack of a proper Section 5032 certification, confer jurisdiction over

Ramapuram upon the District Court, or validate proceedings had prior to its filing, or enable the case to continue as an adult criminal case?

STATUTE INVOLVED

18 U.S.C. 5032 provides, in part pertinent hereto, that

"A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles.

"If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State...."

STATEMENT OF THE CASE

On January 14, 1976 the United States Attorney for the District of Maryland filed

a criminal information in the District Court there charging Ramapuram, a juvenile then 17 years old, with having committed an act of juvenile delinquency, in violation of 18 U.S.C. 5031 et seq., on December 16, 1975, by unlawfully receiving 100 sticks of stolen dynamite (18 U.S.C. 842(h) and 2). With the criminal information the United States Attorney filed his certification, referring to 18 U.S.C. 5032 and certifying that the State's Attorney for Baltimore County, Maryland, where the alleged act of juvenile delinquency had occurred, refused to assume jurisdiction over Ramapuram with respect to that alleged delinquent act. Thereupon, from January 14, 1976 until May 13, 1977, the government proceeded against Ramapuram under that initial certification in various ways. Such proceedings included a hearing on January 16, 1976, an order made on that day committing Ramapuram for study pursuant to 18 U.S.C. 5037(c) (at Ashland, Kentucky, Federal Youth Center), a motion made by the government on February 18, 1976 to transfer the case and to proceed against Ramapuram as an adult, orders relating to examinations of Ramapuram by numerous psychiatrists, a deferred prosecution agreement entered into on March 23, 1976 and an order made by the District Court on March 25, 1976 pursuant to that agreement requiring Ramapuram to refrain from violation of any law and to undergo inpatient psychiatric treatment (at Sheppard Pratt Hospital, a mental institution near Baltimore) until released by order of the District Court. On November

12, 1976 Ramapuram was released from inpatient status at the hospital by doctors there acting without a court order. Thereafter Ramapuram was continued on deferred prosecution status by an order of the District Court dated January 25, 1977, until successful completion of the hospital program, as an outpatient, or until such later time, not to exceed his 21st birthday, as the District Court might deem appropriate.

In March, 1977, Ramapuram was arrested by Baltimore County police on charges unrelated to the alleged act of juvenile delinquency involved in the proceedings before the District Court. The government thereupon obtained from the District Court a bench warrant for Ramapuram, without bail, for alleged violations of the deferred prosecution agreement and lodged that warrant as a detainer against Ramapuram, who was then in the custody of Baltimore County authorities.

On May 13, 1977, at a hearing in the District Court on the government's motion to transfer, Ramapuram, through new counsel who first appeared for him on May 9, 1977, filed a motion to dismiss the juvenile delinquency proceedings for lack of compliance with 18 U.S.C. 5032 because the certification filed by the government was premised on a State's attorney's refusal to assume jurisdiction and not on a State court's refusal, as required by Section 5032. Under his motion Ramapuram contended that the District Court lacked jurisdiction over him because of the insufficiency of

the government's Section 5032 certification. At the hearing on May 13th the District Court granted the government's motion to transfer, subject to a determination regarding the court's jurisdiction, and deferred ruling on Ramapuram's motion to dismiss until the United States Attorney had further opportunity to consider it. On May 17, 1977 the government filed a written answer to Ramapuram's motion to dismiss and appended to that answer a second Section 5032 certification, based, for the first time, on a refusal of jurisdiction over Ramapuram by the Circuit Court for Baltimore County, the appropriate State juvenile court.

On May 27, 1977, the District Court filed a memorandum and order, denying Ramapuram's motion to dismiss. In its memorandum the District Court noted that Ramapuram "has undeniably been proceeded against in this court" (Memorandum, App. 10), but held that the government's initial certification, although based upon the State's Attorney's refusal of jurisdiction, nevertheless satisfied the requirements of Section 5032 and that the government's second certification, based on the State court's refusal of jurisdiction, timely cured any defect in the first certification.

On June 6, 1977 Ramapuram appealed to the Court of Appeals from the District Court's orders. The Court of Appeals heard argument on May 5, 1978 and on May 24, 1978 filed its per curiam opinion

affirming the actions of the District Court and holding that the second certification was timely filed (and hence that the adult criminal prosecution of Ramapuram could continue).

The Facts Material to Consideration of the Questions Presented for Review

On January 14, 1976 the United States Attorney for Maryland filed an information charging Ramapuram, then a juvenile 17 years old, with having committed an act of juvenile delinquency and certified that the State's Attorney for Baltimore County refused to assume jurisdiction. Thereafter, the government proceeded against Ramapuram for more than a year, in many ways, including a deferred prosecution agreement, effected by an order of the District Court, which significantly restrained Ramapuram's liberty. On May 17, 1977, after Ramapuram by his motion to dismiss had raised issues regarding the sufficiency of the government's Section 5032 certification and, hence, the jurisdiction of the District Court and after that court had granted the government's motion to transfer, subject to a determination of its jurisdiction, the government filed a second Section 5032 certification based, for the first time, on a refusal of jurisdiction by the appropriate State court, as required by Section 5032. The Court of Appeals, despite the language of Section 5032 that a juvenile "shall not be proceeded against in any court of the United States" unless a cer-

tification is made that the "appropriate court of a State" refuses to assume jurisdiction, held that the "second certification was timely filed" (App. 3), because filed "prior to Ramapuram's indictment and arraignment" (Id.) (in the adult criminal prosecution (United States v. Lawrence David Ramapuram, Criminal No. B-77-0287, United States District Court for the District of Maryland) instituted by the government on June 7, 1977, after the District Court, on May 13, 1977, granted the government's motion to transfer and, on May 27, 1977, denied Ramapuram's motion to dismiss).

REASONS FOR GRANTING THE WRIT

Despite the clear prohibition contained in Section 5032, that a juvenile shall not be proceeded against in a United States District Court unless a certification is made that the appropriate State court refuses jurisdiction, the Court of Appeals held that a certification meeting the specifications of Section 5032, but which was not filed until after Ramapuram had been proceeded against in the District Court for more than a year, was timely (and hence validated proceedings had, prior to its filing, under an earlier certification which patently did not satisfy the plain language of Section 5032).

In so doing, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court and, Ramapuram contends, has decided that question erroneously.

The plain, unequivocal language of Section 5032 mandates that a juvenile "shall not be proceeded against" in a United States court in a juvenile delinquency case unless the government certifies that "the juvenile court or other appropriate court of a State" "refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency. In the absence of such a certification, the juvenile involved is to be turned over to State authorities. In the instant case Ramapuram, in the words of the District Judge who denied his motion to dismiss, "has undeniably been 'proceeded against' in this court" (App. 10) for more than a year prior to the filing of any certification satisfying the requirement of Section 5032. Nevertheless the Court of Appeals, affirming the District Court, found such a subsequent certification to be timely. Thereby it rejected Ramapuram's assertion that proceedings had against him before the filing of a proper certification were invalid because, without a sufficient certification, the District Court lacked jurisdiction to act against him. Thus, Ramapuram submits, the Court of Appeals decided an important question of

federal law which has not been, but should be, settled by this Court and, he suggests, decided that question erroneously.

The question decided by the Court of Appeals in this cause is important and should be settled by this Court because its resolution potentially affects every juvenile delinquency proceeding brought or to be brought in any court of the United States. It goes to the heart of a vital function of federal courts, the exercise of their jurisdiction to deal with juvenile delinquency. It directly touches not only a substantial portion of the national population, viz. every juvenile resident in this country, but a burgeoning problem, i.e. juvenile delinquency, which has become a major concern of the nation's criminal justice system. Moreover, the decision of the Court of Appeals appears to fly in the face of, or to totally ignore, the clear intent of Congress, in enacting the Juvenile Justice and Delinquency Prevention Act of 1974, as expressed in the pellucidly plain language of Section 5032 of that Act setting out the prerequisites to exercise of federal jurisdiction in juvenile delinquency cases. For all the reasons cited, the pervasive and portentous questions presented in this cause warrant the attention of the Court.

The decision of the Court of Appeals was clearly erroneous, Ramapuram urges. That court held, following United States v. Cuomo, 525 F.2d 1285 (5th Cir. 1976),

that the second certification, which was the only proper one, under Section 5032, filed in the case, since it was the only one based on the appropriate State court's refusal of jurisdiction over Ramapuram, was timely because filed prior to Ramapuram's indictment and arraignment in the (separate) adult criminal proceeding which resulted from the District Court's granting, in the instant juvenile delinquency proceeding, of the government's motion to transfer. (The Court of Appeals did not hold, as the District Court did, that the government's first certification, based only on the State's Attorney's refusal of jurisdiction, was sufficient under Section 5032.) Cuomo was the only case referred to by the Court of Appeals in its opinion. Ramapuram knows of no other case which has undertaken to approach the problem presented by the instant case. But, Ramapuram urges, Cuomo is readily distinguishable from this case because the juvenile in Cuomo was not "proceeded against" prior to the filing of a proper Section 5032 certification, while in the instant case Ramapuram "undeniably" was proceeded against, for more than a year in fact, before the "curative" certification was interposed. The distinction is a critical one.

Cuomo did not hold that a cure, by way of a subsequent, sufficient Section 5032 certification, can follow proceedings. Cuomo only held that:

"Without deciding the latest

possible time for filing, we hold that the filing of a proper certificate prior to arraignment before the district court in the case at bar was sufficient compliance with § 5032 to permit the proceedings against Cuomo to continue. While the provision obviously intends that deference be given state court juvenile processes where they are available, its phraseology requires no abdication of federal jurisdiction to begin an action." (525 F.2d 1285, 1290) (Emphasis supplied.)

And, immediately prior to making that pronouncement, the Cuomo court was careful to point out that:

"The statute does not expressly apply to the commencement of an action against a juvenile, nor may its certificate requirement reasonably be read as a condition precedent to the apprehension and detention of an alleged juvenile delinquent by federal criminal enforcement authorities and magistrates. The statute says that the alleged delinquent 'shall not be proceeded against in any court', that the certificate should be filed in 'an appropriate district court', and that '[i]f an alleged juvenile delinquent is not sur-

rendered to authorities of the state or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States' (emphasis added)." (525 F.2d 1285, 1289-1290)

Cuomo, hence, appears not only to be limited to its own particular facts, but to hold merely that a Section 5032 certification is timely only if it is filed before any proceedings are had against a juvenile in a district court, i.e. before he is "proceeded against", in the words of Section 5032, in such a court, and that simply commencing an action against a juvenile, as by the filing of a criminal complaint by the FBI, or the apprehension and detention of an alleged juvenile delinquent by federal authorities, 525 F.2d 1285, 1289, are not such proceedings as require for their validity prior compliance with the certification requirement of Section 5032. (All that the opinion in Cuomo discloses about the procedural facts of that case is as follows: Cuomo, who was 13 years old, was arrested for allegedly participating in a bank robbery. The arrest warrant was issued by a United States magistrate on a complaint filed by the FBI. Cuomo was held in federal custody for six days. Then he was released on bond, conditioned in part on his proper behavior in school. Thereafter he was again arrested on a warrant issued by the magistrate for alleged violations of the

bond. After he had again been confined for six days, the bond was reinstated. Later he was convicted of violating 18 U.S.C. 2113. The government filed two Section 5032 certificates in the case, one by an Assistant United States Attorney after Cuomo's second arrest and release and the second by the United States Attorney the day before trial.)

Cuomo clearly indicates that proceedings against a juvenile in a district court do require a prior Section 5032 certification to be valid. That "proceedings" were had against Ramapuram in the District Court in the instant case prior to the filing of the only sufficient Section 5032 certificate (the second one) present in the case is acknowledged by that court. The subsequent, second certification could not save those proceedings. The court had no jurisdiction to proceed against Ramapuram, in the face of Section 5032, unless and until a proper certification was filed. In failing to recognize and give effect to that circumstance the District Court committed egregious error, which was subsequently sanctioned by the Court of Appeals. The erroneous construction or application of Section 5032 by the lower courts should not be permitted to stand uncorrected. Because of its importance, the question of federal law which is involved, should be settled by this Court.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

BENJAMIN LIPSITZ,
Attorney for Petitioner

June 23, 1978.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 77-1911

United States of America,

Appellee,

v.

Lawrence David Ramapuram,

Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore. C. Stanley Blair, District Judge.

Argued: May 5, 1978 Decided: May 24, 1978

Before BUTZNER and HALL, Circuit Judges, and the Honorable FRANK A. KAUFMAN, District Judge for the District of Maryland, sitting by designation.

Benjamin Lipsitz for Appellant; Herbert Better, Assistant United States Attorney (Jervis S. Finney, United States Attorney and Renee Laniado, Second Year Law Student on brief) for Appellee.

PER CURIAM:

Lawrence David Ramapuram appeals from the district court's orders denying his motion to dismiss the juvenile delinquency proceedings against him and granting the government's motion to transfer his case for adult criminal prosecution. He contends that the United States Attorney failed to timely certify as required by 18 U.S.C. § 5032 that the state juvenile court refused to assume jurisdiction over the case. We affirm.

On January 14, 1976, the United States Attorney in Maryland filed an information charging Ramapuram, who was then 17 years old, with committing an act of juvenile delinquency and certified that the State's Attorney for Baltimore County refused to assume jurisdiction. After receiving inpatient studies ordered pursuant to 18 U.S.C. § 5037(c), the court deferred prosecution on the condition that Ramapuram receive psychiatric treatment and refrain from violating any law. When Ramapuram was arrested in March of 1977 on a different charge, the government sought to transfer the case for criminal prosecution. At the hearing on this motion, Ramapuram moved to dismiss

the entire proceedings because the certification filed by the government was based on the State's Attorney's refusal to assume jurisdiction instead of on a state court's refusal as specified by § 5032. In its response to this motion, the government filed a new certification supported by a statement of refusal from the appropriate state court.

We agree with the district court that the admittedly proper second certification was timely filed. In *United States v. Cuomo*, 525 F.2d 1285 (5th Cir. 1976), a second § 5032 certification was filed on the day before trial after the defendant challenged the first one. The court stated, "[w]ithout deciding the latest possible time for filing, we hold that the filing of a proper certificate prior to arraignment before the district court in the case at bar was sufficient compliance with § 5032 to permit the proceeding . . . to continue." 525 F.2d at 1290. Because the second certificate in this case was filed prior to Ramapuram's indictment and arraignment, we conclude that it was timely.

Affirmed.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA :

v. : CRIMINAL NO.
B-76-022

LAWRENCE DAVID RAMAPURAM :

MEMORANDUM AND ORDER

This is a juvenile proceeding pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. § § 5031-5042. The statute provides in pertinent part:

A juvenile alleged to have committed an act of juvenile delinquency shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to an appropriate district court of the United States that the juvenile court or other appropriate court of a State (1) does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, or (2) does not have available programs and services adequate for the needs of juveniles.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State....

18 U.S.C. § 5032.

In the original certification filed in this case, the United States Attorney for the District of Maryland, as the Attorney General's designee, certified that the Baltimore County State's Attorney had declined to assume jurisdiction over the juvenile defendant in connection with the acts charged.¹ This court then assumed jurisdiction and entered an order conditionally deferring prosecution. These conditions were allegedly violated and the United States sought to assert its rights under the deferred prosecution agreement by moving to transfer this case for criminal--as opposed to juvenile--prosecution. 18 U.S.C. § 5032. A hearing was held pursuant to the statute and this court orally ruled that the defendant had violated the deferred prosecution agreement and that the case should be transferred for criminal prosecution.

At the hearing, however, newly-retained defense counsel moved to dismiss

¹ The file contains a letter from the Baltimore County State's Attorney to the United States Attorney specifically declining jurisdiction in this matter.

the entire proceeding for want of a proper certification under the above-quoted portion of 18 U.S.C. § 5032. In particular defense counsel urged that the statute requires the Attorney General to certify that an appropriate state court is without, or refuses to exercise, jurisdiction. The court reserved on this motion at the hearing in order to give the government an opportunity to respond; the oral grant of the motion to transfer was made conditional upon the outcome of the motion to dismiss.

The government has now responded to the defendant's motion, offering four alternative arguments in support of its position that the motion should be denied and jurisdiction retained. The arguments are 1) that the State's Attorney's declination of jurisdiction was sufficient under Maryland law to satisfy the federal certification requirement, 2) that certification is not required where the United States seeks, as here, to proceed against the offender as an adult, 3) that the certification is not reviewable, absent bad faith, and 4) that a new certification, from a state court, would not be untimely.²

Because section 5032 in its present form is of such recent origin there is a paucity of reported case law from which to seek guidance in construing it. This court is therefore writing on a clean

² Such a certification was in fact filed by the government along with its opposition to the motion to dismiss.

slate in addressing the present motion and the government's responses.

Taking the government's arguments in order, it seems that certification based upon the representation of the Baltimore County State's Attorney was sufficient to satisfy the statutory requirement. Although the statute literally requires certification of the fact that an appropriate state court refuses to assume jurisdiction, this court does not believe the statute demands literal compliance. Section 5032 is founded in comity and represents a Congressional desire to defer to the states in matters of juvenile delinquency. See S.Rep. No. 93-1011, 93rd Cong., 2d Sess., reprinted in [1974] U.S.Code Cong. & Ad. News 5283, 5320.³ The federal statutory purpose is served by giving the state the first opportunity to assert jurisdiction. As long as the state refusal to exercise jurisdiction originates from a state official having ultimate authority to assume or refuse jurisdiction, it is pointless to require that the refusal originate in the state courts. Accordingly, it is the holding of the court that where federal jurisdiction in a juvenile case is predicated on state refusal of jurisdiction there is

³ "A juvenile shall not be proceeded against in Federal court unless the State courts refuse jurisdiction, or do not have adequate services available."

sufficient compliance with the certification requirement of section 5032 if the refusal originates from a state official who has the authority to make such refusal under state law.⁴

Applying this holding here, under Maryland law the State's Attorney has absolute discretion in deciding whether delinquency proceedings are appropriate. Although, as defendant correctly observes, "[a]ny person or agency" may originate a delinquency proceeding, Annotated Code of Maryland, Cts. and Jud. Proc. Art., § 3-810(a) (Supp. 1976), such proceedings are initiated by petition and such petitions must be prepared, signed and filed by the State's Attorney. Id., § 3-812; Md.R.Civ. P. Rules 903(a)(3), 903(b) and 904. Moreover, "[t]he State's attorney, upon assigning his reasons, may dismiss a petition alleging delinquency in open court." Code, supra, § 3-812(d). Juvenile causes in Maryland cannot proceed without the approval of the State's Attorney; he has the sole discretion controlling whether such causes may proceed and his discretion operates independently of the courts. Accordingly, this court holds that the certification of the United States Attorney that the Baltimore County

⁴ Cases wherein the state courts lack jurisdiction are not at issue here and the court intimates no opinion on the applicability of this holding to such cases.

State's Attorney refused to proceed against defendant satisfies the requirements of 18 U.S.C. § 5032 and permits this court to exercise its jurisdiction.

The government's second contention is wholly without merit. The quote in footnote three, supra, and the material which follows it in the legislative history clearly refutes the government's contention that no certification is required where the government moves to transfer. S.Rep. No. 93-1011, [1974] U.S.Code Cong. & Ad. News, supra, at 5320.

As for the contention that the certification is unreviewable, in view of the holding hereinabove and below, this court need not--and hence will not--go this far. United States v. Hill, 538 F.2d 1072, 1077 (4th Cir. 1976).⁵

⁵ Moreover, the court is inclined to the view expressed by the defendant, that to the extent the not-reviewable argument is viable, it is viable only as applied to review of the merits of state court refusal to accept jurisdiction. Even in United States v. Vancier, 515 F.2d 1378 (2d Cir. 1975), the case establishing the non-reviewability of Section 5032 certifications, the holding is susceptible of this interpretation, although the language is broad, because the defendant in fact sought review of the merits of the certification.

Finally, the court believes as the government contends that a faulty Section 5032 certification is susceptible of cure. The only significant question is one of timeliness. United States v. Cuomo, 525 F2d 1285, 1289-1290 (5th Cir. 1976). The government has now filed in the instant action a second certification based on a refusal of juvenile jurisdiction over the defendant by a judge of the Circuit Court of Baltimore County. The defendant concedes this certification is proper and agrees that the issue is one of timeliness.

The precise holding in Cuomo was: "Without deciding the latest possible time for filing, we hold that the filing of a proper certificate prior to arraignment before the district court in the case at bar was sufficient compliance with § 5032 to permit the proceeding against Cuomo to continue." Id. at 1290. The defendant argues, and reasonably so, that this and other language in Cuomo stand for the more general proposition, of which Cuomo is factually one example, that proper certification must exist before the defendant may be "proceeded against" in the federal courts. See id. at 1289.

Defendant in the instant case has undeniably been "proceeded against" in this court.⁶ But the court disagrees with

⁶ The original certification was filed over a year prior to the filing of the

the proposition that cure must precede proceedings. Although Cuomo may reasonably be so read, nonetheless that court was careful to preface its precise holding with clear language that it was not "deciding the latest possible time for filing." Both the statutory language and S.Rep. 93-1011 state that a juvenile shall not be proceeded against in federal court "unless" there is filed a proper certification. Neither source declares that there may be no proceedings "until" a proper certification is filed. Nor is the language to the effect that there may be no proceedings "unless" a certification is "first" filed. In short, there is no language of priority. Furthermore, the defendant has shown no prejudice justifying dismissal of these proceedings and the court can conceive of none. Accordingly, this court holds that in the instant case, cure was not untimely. Like the Cuomo court, this court refuses to say at what stage in the proceedings a curative certification might be untimely, but holds only that it was not so in this case. For the foregoing reasons, it is

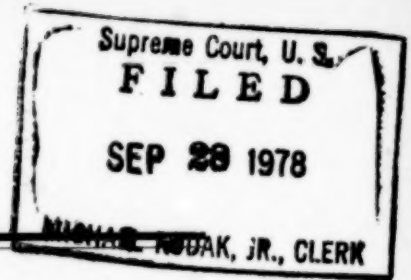
present motion and the cure in opposition thereto. In the interim, although prosecution was deferred, the agreement so doing was effected by order of this court and it imposed serious restraints on the defendant's liberty. Accordingly, the court holds that defendant was "proceeded against" prior to the filing of the curative certification.

this 27th day of May, 1977, by the United States District Court for the District of Maryland, ORDERED:

That defendant's motion to dismiss be, and the same hereby is, DENIED.

/s/ C. Stanley Blair
C. Stanley Blair
United States District Judge

No. 77-1818



In the Supreme Court of the United States

OCTOBER TERM, 1978

LAWRENCE DAVID RAMAPURAM, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1818

LAWRENCE DAVID RAMAPURAM, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
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**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

Petitioner, who was charged with an act of juvenile delinquency and subsequently transferred for criminal prosecution as an adult, contends that certifications filed by the United States Attorney showing a refusal by the state prosecutor and the appropriate state court to assume jurisdiction over him with respect to the delinquent act were either invalid or untimely under 18 U.S.C. 5032 and that the district court thus lacks jurisdiction to try him.

Petitioner was charged by criminal information in the United States District Court for the District of Maryland with an act of juvenile delinquency, as defined in 18 U.S.C. 5031, the underlying offense being the unlawful

receipt of stolen dynamite, in violation of 18 U.S.C. 842 (h) and 2.¹ Thereafter, petitioner filed a motion to dismiss the proceedings against him for lack of jurisdiction. The district court denied that motion and granted the government's motion, pursuant to 18 U.S.C. 5032, to transfer petitioner for criminal prosecution as an adult (Pet. App. 4-12). Petitioner appealed from both orders. The court of appeals affirmed (Pet. App. 1-3).

1. The information was filed against petitioner on January 14, 1976, at a time when he was 17 years old, and it was accompanied by a certification from the United States Attorney, pursuant to 18 U.S.C. 5032, attesting that the Maryland State's Attorney had refused to assume jurisdiction over petitioner with respect to the alleged act of juvenile delinquency (A. 7, 22).² The district court ordered that petitioner be committed to the custody of the Attorney General for observation and study under 18 U.S.C. 5037(c). On February 18, 1976, the government moved to transfer petitioner for criminal prosecution as an adult, pursuant to 18 U.S.C. 5032, which permits such a transfer if the alleged delinquent act, if committed by an adult, would be a felony punishable by a maximum penalty of at least 10 years' imprisonment (Pet. 5).³ This

¹Federal proceedings against juvenile delinquents are governed by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031 *et seq.* The most recent amendments to the Act were part of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1133.

²"A." refers to the appendix filed by petitioner in the court of appeals.

³The alleged act of juvenile delinquency, the knowing and unlawful receipt of approximately 100 sticks of dynamite, carries a maximum penalty of 10 years' imprisonment and a \$10,000 fine (18 U.S.C. 844(a)).

motion was not acted upon, however, and shortly thereafter an agreement entered into by petitioner, his counsel, and the government conditionally deferring prosecution was formally approved by the court (A. 4).

In March 1977, after petitioner was arrested by local authorities and charged with the armed robbery of a gasoline station and several additional and unrelated breaking and entering offenses, to which petitioner subsequently confessed (A. 63-64, 75, 77), the government notified the district court that, as a result of petitioner's failure to abide by the conditions set forth in the deferred prosecution agreement (A. 43, 57), it wished to pursue its earlier motion to transfer petitioner for criminal prosecution as an adult. At the hearing on the motion to transfer, petitioner moved to dismiss the delinquency proceedings for lack of jurisdiction, contending for the first time that the United States Attorney's Section 5032 certification was invalid because it certified only that the state prosecutor had refused to assume jurisdiction over petitioner, and not, as petitioner contended was necessary to satisfy the requirements of 18 U.S.C. 5032, that the state juvenile court had refused to assume such jurisdiction. The court granted the transfer motion, subject to the disposition of petitioner's motion to dismiss (A. 5, 92). With its answer to the dismissal motion, the government submitted a supplemental certification and a letter from the Chief Judge of the Circuit Court for Baltimore County, Maryland, stating that the state juvenile court refused to assume jurisdiction with respect to the original delinquent conduct (A. 18, 21).

The district court denied petitioner's motion to dismiss, finding that the original certification satisfied the requirements of 18 U.S.C. 5032, that in any event the

second certification, showing a refusal of jurisdiction by the state juvenile court, was timely and sufficient, and that petitioner was not prejudiced in any way by the delay in filing the second certification (Pet. App. 4-12). The court of appeals affirmed on the ground that "the admittedly proper second certification was timely filed" (Pet. App. 3).

2. To begin with, review is unwarranted in this case because the district court's orders denying petitioner's motion to dismiss the information and granting the government's motion to transfer the case for adult criminal prosecution are interlocutory and thus, absent circumstances not present here, unappealable. See *United States v. MacDonald*, No. 75-1892 (May 1, 1978), slip op. 4 and 11 n. 7; *Abney v. United States*, 431 U.S. 651, 656-657 (1977); *DiBella v. United States*, 369 U.S. 121, 124 (1962); *Snodgrass v. United States*, 326 F. 2d 409 (8th Cir. 1964). Moreover, the information has been superseded by an indictment returned on June 8, 1977, in the United States District Court for the District of Maryland, charging petitioner as an adult with receipt of stolen dynamite in violation of 18 U.S.C. 842(h) and 2. If petitioner had any remedy, therefore, it would lie in an attack on the indictment at the proper time, since the validity of the information is now of solely academic interest.⁴

3. In any event, the district court's decision is correct on the merits as to both certifications.

The first certification, supported by the letter of the State's Attorney for Baltimore County stating his refusal to assume jurisdiction over the underlying offense, sufficiently showed an abdication of jurisdiction by the

⁴A motion to dismiss the indictment is pending in the United States District Court.

state court to comply with 18 U.S.C. 5032. Under Maryland law, final discretion as to prosecution of juveniles for state offenses is vested exclusively in the State's Attorney, so that, as a practical matter, the state court was incapable of assuming jurisdiction over the offense in question once the State's Attorney declined to prosecute. See *Murphy v. Yates*, 276 Md. 475, 495, 348 A. 2d 837, 847-848 (1975); *In re Anderson*, 20 Md. App. 31, 48-49, 315 A. 2d 540, 549-550, aff'd, 272 Md. 85, 321 A. 2d 516, appeal dismissed, 419 U.S. 809 (1974), cert. denied, 421 U.S. 1000 (1975). As the district court correctly reasoned (Pet. App. 7), the intent of Congress to "defer to the states in matters of juvenile delinquency" is adequately served by "giving the state [if it has adequate juvenile programs] the first opportunity to assert jurisdiction," as was done here. See *United States v. Cuomo*, 525 F. 2d 1285, 1290 (5th Cir. 1976).

Even were the first certification faulty, the second certification, supported by a letter from the appropriate state court and filed prior to petitioner's indictment and arraignment, was, as both courts below concluded, filed in sufficient time to cure the defect and supply district court jurisdiction for proceedings on the indictment. *United States v. Cuomo*, *supra*, 525 F. 2d at 1289-1290. See also *United States v. Hill*, 538 F. 2d 1072, 1076-1077 (4th Cir. 1976).⁵ By filing the second certification at that time, the government in no way defeated the statutory purpose,

⁵Although, as petitioner points out (Pet. 12-15), no district court proceedings were had against the juvenile in *United States v. Cuomo*, *supra*, before the filing of the second certification there, the express holding of *Cuomo* is that the government was "correct" in its view that "the certification need be filed only prior to arraignment in the district court." 525 F. 2d at 1289. Moreover, the Fifth Circuit noted that it was not "deciding the latest possible time for filing" such a certification. *Id.* at 1290.

noted above, of assuring states with adequate juvenile offender programs the opportunity to deal with juvenile offenses if they so choose, nor did the government thereby prejudice petitioner in his defense against the charge on which he has been indicted. Thus, the requirements of 18 U.S.C. 5032 were satisfied by the second certification, as well as the first, and the district court properly allowed the criminal prosecution of petitioner to go forward.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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